

EUROPEAN PARLIAMENT

2004



2009

Committee on Civil Liberties, Justice and Home Affairs

2007/0248(COD)

10.6.2008

AMENDMENTS 29 - 93

Draft opinion

Alexander Alvaro

(PE405.782v02-00)

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation

Proposal for a directive – amending act
(COM(2007)/0698 – C6-0420/2007 – 2007/0248(COD))

Amendment 29
Alexander Alvaro

Proposal for a directive – amending act
Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) This Directive provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right of confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community.

Or. en

Amendment 30
Stavros Lambrinidis

Proposal for a directive – amending act
Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) When defining the implementing measures on the security of processing, according to the regulatory procedure with scrutiny referred to in art. 14 a (2), the Commission shall involve all relevant European Authorities and Organisations (ENISA, EDPS and Article 29 Working Party) as well as all relevant stakeholders, particularly in order to be informed on best available solutions, both technically and economically, suitable to improve the implementation of the Directive.

Amendment 31
Alexander Alvaro

Proposal for a directive – amending act
Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) For the purposes of this Directive, “traffic data” should not only mean any data which is processed for the purpose of the conveyance of a communications network or for the billing thereof but also personal data within the meaning of Article 2 of Directive 95/46/EC when the data concerned whether alone or in conjunction with other legally available data are relating to an individual directly identifiable by the entity processing the data.

Or. en

Amendment 32
Kathalijne Maria Buitenweg

Proposal for a directive – amending act
Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) For the purposes of this Directive, “traffic data” should not only mean any data which is processed for the purpose of the conveyance of a communications network or for the billing thereof but also personal data when the data concerned, whether alone or in conjunction with other data, relate to an individual, directly or indirectly identifiable by the data controller.

Or. en

Justification

The definition of "traffic data" should be consistent with Directive 95/46/EC, which includes as personal data, information that identifies an individual both "directly" and "indirectly".

Amendment 33 **Alexander Alvaro**

Proposal for a directive – amending act **Recital 29**

Text proposed by the Commission

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***subscribers concerned by such security incidents*** should be notified without delay ***and informed in order to be able to take the necessary precautions***. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected.

Amendment

(29) A ***serious*** breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***the national regulatory authority*** should be notified without delay. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected.

The competent authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious the competent authority shall require the provider of publicly available electronic communications service and the provider of information society services to appropriately notify without undue delay the persons concerned by the breach.

Or. en

Amendment 34
Kathalijne Maria Buitenweg

Proposal for a directive – amending act
Recital 29

Text proposed by the Commission

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, the subscribers concerned by such security incidents should be notified without delay **and informed in order to be able to take the necessary precautions**. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected.

Amendment

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, the subscribers concerned by such security incidents **and the national regulatory authority** should be notified without delay. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected. **The National Regulatory Authority should consider and determine the seriousness of the breach and should require the provider where appropriate to notify without undue delay the subscribers directly affected by the breach.**

Or. en

Amendment 35
Bill Newton Dunn

Proposal for a directive – amending act
Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) Article 15(1) of this Directive is to be understood so that disclosure of personal data in the context of Article 8 of Directive 2004/48 does not prejudice this Directive or Directive 1995/46 where it takes place upon a justified, i.e. sufficiently founded, and proportionate request in accordance with procedures set out by the Member States, which

guarantee that these safeguards are respected.

Or. en

Justification

Article 8, Directive 2004/48 on the enforcement of intellectual property rights relates to disclosure of information, which may involve data protected under this Directive (2002/58) and/or Directive 1995/46. It is clear from Article 15(1) of this Directive and Article 13(1)(g) of Directive 1995/46 that such disclosure may take place, as it is necessary to protect the rights and freedoms of third parties. In view of recent case-law it seems relevant to clarify at EU-level the relationship between the specific disclosure provision in Article 8 of Directive 2004/48 and the provisions of this Directive, and thereby increase legal certainty for all parties.

Amendment 36
Patrick Gaubert

Proposal for a directive – amending act
Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) When implementing measures transposing Directive 2002/58/EC, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with the directive but also make sure that they do not rely on an interpretation of the directive which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.

Or. fr

Justification

This amendment takes account of the Court of Justice judgment of 29 January 2008 in the Promusicae v Telefónica case, which reaffirms that Member States must interpret the directive in a manner that does not conflict with other fundamental rights or general principles of law. This constitutes a guarantee for the protection of the rights and freedoms of others.

Amendment 37
Jean-Marie Cavada

Proposal for a directive – amending act
Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) When implementing measures transposing this Directive, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with the directive but also make sure that they do not rely on an interpretation of the directive which would be in conflict with fundamental rights or other general principles of Community law, such as the principle of proportionality.

Or. fr

Justification

This amendment is based on the wording of the Court of Justice judgment of 29 January 2008 in the Promusicae v Telefónica case. In its ruling, the court reaffirms that Member States must, when implementing the directive, rely on an interpretation that does not conflict with fundamental rights or other general principles of Community law.

Amendment 38
Jean Lambert

Proposal for a directive – amending act
Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) When implementing the measures transposing this Directive, the authorities of the Member States should not only interpret their national law in a manner consistent with this Directive, but also make sure that they do not rely on an interpretation of this Directive which would conflict with fundamental rights or with other general principles of Community law, such as the principle of

proportionality.

Or. en

Amendment 39
Michael Cashman

Proposal for a directive – amending act
Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) When implementing the measures transposing the Directive the authorities and courts of the Member States must not only interpret their national law in a manner consistent with this Directive but also make sure that they do not rely on an interpretation of the Directive which would be in conflict with fundamental rights or with other general principles of Community law such as the principle of proportionality.

Or. en

Justification

This amendment incorporates the wording of the recent ECJ ruling in the “Promusicae/ Telefónica” case (29 January 2008). This Court decision reaffirms that when implementing this Directive, Member States must make sure that they follow an interpretation which doesn’t conflict with fundamental rights and other general principles of Community law.

Amendment 40
Silvia-Adriana Țicău

Proposal for a directive – amending act
Recital 33

Text proposed by the Commission

Amendment

(33) *The Authority* can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best

(33) The European Network and Information Security Agency (ENISA), together with the national regulatory authorities for communications, can contribute to the enhanced level of

practices in risk management, and establishing common methodologies for risk assessment. In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.

protection for personal data and privacy in the Community by, among other things, providing expertise and advice, ***adopting standards for network security in respect of electronic communications and data***, and promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment. In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.

Or. ro

Justification

It is necessary to strengthen the role of ENISA and that of the national regulatory authorities for electronic communications.

Amendment 41 Syed Kamall

Proposal for a directive – amending act Recital 33

Text proposed by the Commission

(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment. ***In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.***

Amendment

(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment.

Or. en

Amendment 42
Bill Newton Dunn

Proposal for a directive – amending act
Recital 34

Text proposed by the Commission

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user’s terminal equipment for the benefit of a third party (so-called “spyware”) poses a serious threat to users’ privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs, USB keys.

Amendment

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user’s terminal equipment for the benefit of a third party (so-called “spyware”) poses a serious threat to users’ privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs, USB keys.
Member States shall encourage end-users to take the necessary steps to protect their terminal equipment against viruses and spy ware.

Or. en

Justification

The terminal equipment is the weakest link in a network and, hence, should be well protected. End-users should understand the risks they face while surfing the internet, when they download and use software or data storage media.

Amendment 43
Syed Kamall

Proposal for a directive – amending act
Recital 35

Text proposed by the Commission

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-

Amendment

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-

users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers and thus defend the interests of their customers, as well as their own legitimate business interests.

users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers *for such infringements* and thus defend the interests of their customers, as well as their own legitimate business interests.

Or. en

Amendment 44
Syed Kamall

Proposal for a directive – amending act
Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) Where location data other than traffic data can be processed, such data should only be processed when they are made anonymous or with the consent of the users or subscribers. They should be given clear and comprehensive information on the possibility to withdraw their consent for the processing of traffic data at any time.

Or. en

Amendment 45
Alexander Alvaro

Proposal for a directive – amending act
Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) Where location data other than traffic data can be processed, such data may only be processed when they are made anonymous or with the prior consent of the users or subscribers. They shall be given clear and comprehensive

information on the possibility to withdraw their consent for the processing of traffic data at any time.

Or. en

Amendment 46
Alexander Alvaro

Proposal for a directive – amending act

Article 2 - point -1 (new)

Directive 2002/58/EC

Article 1 - paragraph 1

Text proposed by the Commission

Amendment

(-1) Article 1(1) shall be replaced by the following:

1. This Directive provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right of confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the community.

Or. en

Amendment 47
Kathalijne Maria Buitenweg

Proposal for a directive – amending act

Article 2 - point -1 b (new)

Directive 2002/58/EC

Article 2 - point (b)

Text proposed by the Commission

Amendment

(-1b) Article 2(b) shall be replaced by the following:

(b) "traffic data" means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof. Traffic data within the meaning of this Article are also personal data within the meaning of Directive 95/46/EC when the data concerned, whether alone or in conjunction with other data relate to an individual directly or indirectly identifiable by the data controller.

Or. en

Justification

Under Directive 95/46 an IP address is a personal data because from the IP address, it is possible to identify an individual indirectly.

Amendment 48

Ioannis Varvitsiotis, Georgios Papastamkos

Proposal for a directive – amending act

Article 2 - point -1 b (new)

Directive 2002/58/EC

Article 2 - point (b)

Text proposed by the Commission

Amendment

(-1b) Article 2(b) shall be replaced by the following:

(b) "traffic data" means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof. Traffic data within the meaning of this Article are also personal data within the scope of Article 2 of Directive 95/46/EC only when the data concerned relate to an individual directly identifiable by the entity processing the

data, using reasonable means.

Or. en

Justification

There is a need to clarify in which cases traffic data must be considered personal data.

Amendment 49
Alexander Alvaro

Proposal for a directive – amending act
Article 2 - point -1 b (new)
Directive 2002/58/EC
Article 2 - point (b)

Text proposed by the Commission

Amendment

(-1b) Article 2(b) shall be replaced by the following:

(b) "traffic data" means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof. Traffic data within the meaning of this Article are also personal data within the meaning of Article 2 of Directive 95/46/EC when the data concerned whether alone or in conjunction with other legally available data are relating to an individual directly identifiable by the entity processing the data.

Or. en

Amendment 50
Jean-Marie Cavada

Proposal for a directive – amending act
Article 2 - point -1 c (new)
Directive 2002/58/EC
Article 2 - point (d)

Text proposed by the Commission

Amendment

(-1c) Article 2(d) shall be replaced by the following:

(d) "communication" means any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service. This does not include any information conveyed as part of a broadcasting service to the public or any other communication to the public over an electronic communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information;

Or. fr

Justification

The information carried by services communicated to the public, such as new on-line services (including streaming, webcasting, simulcasting and interactive services), should not be deemed confidential, because it is transmitted to the public. It should therefore be excluded from the scope of 'communication'.

Amendment 51
Bill Newton Dunn

Proposal for a directive – amending act
Article 2 - point -1 c (new)
Directive 2002/58/EC
Article 2 - point (d)

Text proposed by the Commission

Amendment

(-1c) Article 2(d) shall be replaced by the following:

(d) "communication" means any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service. This does not include any information conveyed as part of any communication to the public

over an electronic communications network, *including broadcasting*, except to the extent that the information can be related to the identifiable subscriber or user receiving the *solicited and lawfully communicated* information.

Or. en

Justification

The 2002 privacy Directive was excluding broadcasting from the notion of "electronic communications". The purpose of this amendment is to update and delineate the notion of "communication" in the context of this Directive - it is to take into consideration the specificities of new services (for example webcasting and other similar types of services) in the online world. This amendment is consistent with Directive 2007/65/EC.

Amendment 52 **Michael Cashman**

Proposal for a directive – amending act

Article 2 - point -1 c (new)

Directive 2002/58/EC

Article 2 - point (d)

Text proposed by the Commission

Amendment

(-1c) Article 2(d) shall be replaced by the following:

(d) "communication" means any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service. This does not include any information conveyed as part of *any communication* to the public over an electronic communications network, *including broadcasting*, except to the extent that the information can be related to the identifiable subscriber or user receiving the *solicited and lawfully communicated* information;

Or. en

Amendment 53
Alexander Alvaro

Proposal for a directive – amending act

Article 2 - point 3 - point a a (new)

Directive 2002/58/EC

Article 4 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Without prejudice to the provisions of Directive 95/46/EC and 2006/24/EC these measures shall include:

- Appropriate technical and organisational measures to ensure that personal data can be accessed only by authorized personnel and to protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure

- Appropriate technical and organizational measures to protect the network and services against accidental, unlawful or unauthorized usage, interference or hindering of its functioning or availability.

- A security policy with respect to the processing of personal data

- A process for identifying and assessing reasonably foreseeable vulnerabilities in the systems maintained by the provider of the electronic communication service, which shall include regular monitoring for security breaches

- A process for taking preventive, corrective and mitigating action against any vulnerabilities discovered in the process described under hyphen three and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach

Amendment 54

Kathalijne Maria Buitenweg

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3

Text proposed by the Commission

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify **the subscriber concerned** and the national regulatory authority of such a breach. The notification to the **subscriber** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Amendment

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services, **and any company providing services to consumers over the Internet which is the data controller and the provider of information society services** shall, without undue delay, notify **the concerned user** and the national regulatory authority of such a breach. The notification to the national regulatory authority shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Or. en

Justification

A user of an electronic communication service is not necessarily a subscriber of this particular service e.g. while being in contact with a subscriber. The provisions of this article should also cover former subscribers. Therefore, the word "user" is more appropriate.

Amendment 55
Alexander Alvaro

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3

Text proposed by the Commission

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify **the subscriber concerned and** the national regulatory authority of such a breach. The notification to the **subscriber** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Amendment

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community **which is likely to cause harm to users**, the provider of publicly available electronic communications services, **as well as any company operating on the Internet and providing services to consumers, who is the data controller and the provider of information society services** shall, without undue delay, notify the national regulatory authority **or the competent authority according to the individual law of the Member State** of such a breach. The notification to the **competent authority** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **competent authority** shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Or. en

Amendment 56
Stavros Lambrinidis

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3

Text proposed by the Commission

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider **of publicly available electronic communications services** shall, without undue delay, notify the **subscriber** concerned and the national regulatory authority of such a breach. The notification to the subscriber shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Amendment

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services **and providers of Information society services** in the Community, the provider shall, without undue delay, notify **all affected persons** and the national regulatory authority of such a breach. The notification to the subscriber shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach. **NRAs must, at regular intervals, carry out statistical analyses, on a company-by-company and industry-wide basis, on the types and frequency of data breaches during said intervals, as well as on the speed and effectiveness of the mitigation of such breaches. NRAs must also monitor whether companies have faithfully executed their notification obligations under this article and impose appropriate sanctions, including publication, as appropriate, in case of a breach.**

Or. en

Justification

The notification requirements should include all affected persons whose data has effectively been compromised by the security breach, not just “subscribers”. Also, the role of NRAs needs to be further clarified in order to ensure the effective implementation of the measures provided for.

Amendment 57

Syed Kamall

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3

Text proposed by the Commission

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify **the subscriber concerned and the national regulatory** authority of such a breach. The notification to the **subscriber** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **national regulatory** authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Amendment

3. In case of a **serious** breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, **which poses a reasonable threat to cause harm to users**, the provider of publicly available electronic communications services shall, without undue delay, notify the **competent** authority of such a breach. The notification to the national regulatory authority shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **competent** authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Or. en

Amendment 58

Alexander Alvaro

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The competent authority shall consider and determine the seriousness of the breach. If the breach is

deemed to be serious the competent authority shall require the provider of publicly available electronic communications service and the provider of information society services to appropriately notify without undue delay the persons concerned by the breach. The notification must contain the elements described in paragraph 3.

The notification of a serious breach may be postponed in cases where the notification can undermine the progress of a criminal investigation related to the serious breach.

Or. en

Amendment 59
Alexander Alvaro

Proposal for a directive – amending act
Article 2 - point 3 - point b
Directive 2002/58/EC
Article 4 - paragraph 3 c (new)

Text proposed by the Commission

Amendment

3c. The breach shall not be determined to be serious and the provider of publicly available electronic communication services and the provider of information society services shall be exempt from the requirement to notify or provide notification to the persons concerned, if it can demonstrate that there is no reasonable risk to the personal data affected by the breach due to the use of appropriate technological protection measures, including but not limited to appropriate encryption technologies.

The technological protection measures in the event of accidental or unlawful loss, alteration, unauthorized disclosure of or access to personal data which are transmitted or stored would either render

the data unintelligible to any third party, or in the event of accidental or unlawful loss of the technological protection measures would render the personal data available to the provider of publicly available electronic communication services and the provider of information society services.

Or. en

Amendment 60
Silvia-Adriana Țicău

Proposal for a directive – amending act
Article 2 - point 3 - point b
Directive 2002/58/EC
Article 4 - paragraph 3 c (new)

Text proposed by the Commission

Amendment

(3c) Providers of electronic communications services intended for the public and providers of specific information society services shall take technical measures to reduce the vulnerability of personal data stored or processed by them and the risks of such data being accessed, divulged in unauthorised fashion, or modified or lost accidentally or illicitly. In the case of providers of specific information society services, and, in particular, e-government services, such technical measures may include, non-limitatively, appropriate data encryption technologies.

Or. ro

Justification

Providers of electronic communications services need to take appropriate measures to ensure personal data protection.

Amendment 61
Silvia-Adriana Țicău

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3 d (new)

Text proposed by the Commission

Amendment

(3d) Providers of electronic communications services intended for the public and providers of specific information society services shall be exempted from the obligation to notify subscribers where it can be proved that the personal data transmitted, stored or processed which are affected by security breaches have been protected using suitable technological precautions so that they become unreadable in case of unauthorised access or accidental or illicit modification or loss, while remaining recoverable should they become accessible again. Subscribers shall be notified only in cases where the use of their lost or fraudulently accessed data could lead to substantial financial loss or social damage.

Or. ro

Justification

Notifications of this type should only be made where a breach of security would lead to significant losses, unauthorised divulgation or unauthorised access to such data and the fraudulent use of lost personal data could be seriously prejudicial to the persons concerned.

Amendment 62
Bill Newton Dunn

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 4

Text proposed by the Commission

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission **may**, following consultation with **the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”), and the European Data Protection Supervisor, adopt technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article**

Amendment

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3 **a-c**, the Commission **should**, following consultation **with the European Data Protection Supervisor, the relevant stakeholders and ENISA, recommend technical implementing measures concerning *inter alia* the measures described in paragraph 1a and the circumstances, format and procedures applicable to information and notification requirements referred to in paragraph 3a and 3b.**

Or. en

Amendment 63

Silvia-Adriana Țicău

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 4

Text proposed by the Commission

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission may, following consultation with the **European Electronic Communications Market Authority (hereinafter referred to as “the Authority”), and the European Data Protection Supervisor, adopt technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.**

Amendment

(4) order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission may, following consultation with the **national regulatory authorities for electronic communications and the European Data Protection Supervisor, adopt *security standards for personal data protection, together with* technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.**

Or. ro

Justification

The role of the national regulatory authorities for electronic communications needs to be strengthened and not diminished.

Amendment 64 **Stavros Lambrinidis**

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 4 - subparagraph 1

Text proposed by the Commission

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission **may**, following consultation with the **European Electronic Communications Market Authority (hereinafter referred to as “the Authority”)**, and the European Data Protection Supervisor, adopt technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.

Amendment

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission **should**, following consultation with **ENISA**, the European Data Protection Supervisor **and the Article 29 Working Party**, adopt technical implementing measures *concerning inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article. ***The Commission shall involve all relevant stakeholders, particularly in order to be informed on best available solutions, both technically and economically, suitable to improve the implementation of the Directive.***

Or. en

Justification

The Article 29 Working Party should also be consulted since any measures introduced will directly affect the information to be given to persons concerned. Industry should be consulted as well.

Amendment 65
Silvia-Adriana Țicău

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 4 a (new)

Text proposed by the Commission

Amendment

(4a) The national regulatory authorities for electronic communications shall, every six months, submit to the Commission a report summarising the notifications received concerning security in respect of data processing and electronic communications networks, together with the measures proposed for improvement. On the basis of this information, the Commission shall, each year, submit a report to the European Parliament, to be accompanied by proposals for measures for improving the security of electronic communications networks and specific information society services.

Or. ro

Justification

In view of the rapid pace of change in the field of electronic communications, measures to improve network security for such communications and for specific information society services need to be taken with sufficient regularity to enable providers to take a proactive rather than a reactive approach.

Amendment 66
Michael Cashman

Proposal for a directive – amending act

Article 2 - point 4-3 (new)

Directive 2002/58/EC

Article 5 - paragraph 3

Text proposed by the Commission

Amendment

(-3) Article 5(1) shall be replaced by the

following:

1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15(1) and Article 13(1) of Directive 95/46/EC. This paragraph shall not prevent technical storage which is necessary for the conveyance of a communication without prejudice to the principle of confidentiality.

Or. en

Justification

This amendment clarifies that Article 15 should also be read in light of Article 13 of the 1995 Data Protection Directive and therefore incorporates recent ECJ case law (C-275/06).

Amendment 67
Stavros Lambrinidis

Proposal for a directive – amending act
Article 2 - point 4
Directive 2002/58/EC
Article 5 - paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user ***is only allowed on condition that*** the subscriber or user concerned is provided with clear and comprehensive information in accordance with Directive 95/46/EC, *inter alia* about

Amendment

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user, ***either directly or indirectly and by means of any kind of storage medium, is prohibited unless the*** subscriber or user concerned ***has given her/his prior consent and is***

the purposes of the processing **and is offered the right to refuse such processing by the data controller**. This shall not prevent any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

provided with clear and comprehensive information in accordance with Directive 95/46/EC, *inter alia* about the purposes of the processing. This shall not prevent any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Or. en

Amendment 68
Alexander Alvaro

Proposal for a directive – amending act
Article 2 - point 4
Directive 2002/58/EC
Article 5 - paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user **is only allowed on condition that** the subscriber or user concerned is provided with clear and comprehensive information in accordance with Directive 95/46/EC, *inter alia* about the purposes of the processing and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out **or facilitating** the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Amendment

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user, **either directly or indirectly by means of any kind of storage medium, is prohibited unless the subscriber or user concerned has given his/her prior consent, whereas respective browser settings constitute prior consent, and** is provided with clear and comprehensive information in accordance with Directive 95/46/EC, *inter alia* about the purposes of the processing and is offered the right to refuse such processing and is offered the right to refuse such processing by data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communication network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Amendment 69

Syed Kamall

Proposal for a directive – amending act

Article 2 - point 4 a (new)

Directive 2002/58/EC

Article 6 - paragraph 6a (new)

Text proposed by the Commission

Amendment

(4a) In Article 6 the following paragraph 6a is added:

6a. Traffic data may be processed by any natural or legal person for the purpose of implementing technical measures to ensure the security of a public electronic communication service, a public or private electronic communications network, an information society service, or related terminal and electronic communication equipment. Such processing must be restricted to what is strictly necessary for the purposes of such security activity.

Or. en

Amendment 70

Alexander Alvaro

Proposal for a directive – amending act

Article 2 - point 4 b (new)

Directive 2002/58/EC

Article 9 - paragraph 1

Text proposed by the Commission

Amendment

(4b) Article 9(1) shall be replaced by the following:

1. Where location data other than traffic data, relating to users or subscribers of public communications networks or publicly available electronic communications services, can be

processed, such data may only be processed when they are made anonymous, or with the prior consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data other than traffic data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service. Users or subscribers shall be given the possibility to withdraw their consent for the processing of location data other than traffic data at any time. *Users or subscribers shall be given clear and comprehensive information on the possibility to withdraw their consent for the processing of traffic data at any time.*

Or. en

Amendment 71
Syed Kamall

Proposal for a directive – amending act
Article 2 - point 4 c (new)
Directive 2002/58/EC
Article 9 - paragraph 1

Text proposed by the Commission

Amendment

(4c) Article 9(1) shall be replaced by the following:

1. Where location data other than traffic data, relating to users or subscribers of public communications networks or publicly available electronic communications services, can be processed, such data may only be processed when they are made anonymous, or with the prior consent of the users or subscribers to the extent and for the duration necessary for the

provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data other than traffic data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service. Users or subscribers shall be given the possibility to withdraw their consent for the processing of location data other than traffic data at any time. *Users or subscribers shall be given clear and comprehensive information on the possibility to withdraw their consent for the processing of traffic data at any time.*

Or. en

Amendment 72
Carlo Casini, Stefano Zappalà

Proposal for a directive – amending act
Article 2 - point 4 d (new)
Directive 2002/58/EC
Article 12 - paragraph 2

Text proposed by the Commission

Amendment

(4d) Article 12, paragraph 2, is amended as follows:

2. Member States shall ensure that all end-users of electronic communications services and networks have their information included in directory databases and are expressly asked at the moment of requesting the service, and at regular intervals thereafter, how they wish relevant information concerning them to be included in such databases. End-users shall also be offered the option of having certain information included in the databases but not disclosed to users of directory services, and of verifying, correcting or withdrawing such data. Not

being included in a public subscriber directory, verifying, correcting or withdrawing personal data from it shall be free of charge.

Or. it

Justification

Directory enquiry services are of crucial importance, particularly to disabled and elderly users (as is recognised in the Universal Services Directive). The inclusion of information on end-users is, in many cases, made difficult by the fact that operators are unaccustomed to seeking consent. This is particularly true of alternative fixed-line network operators and mobile network operators. In Member States which have not legislated in this area, end-user data – particularly for mobile-network customers – are only very rarely included.

The systems currently used enable data for use in directory assistance services to be included in databases without the users of such services having direct access to the data. This enables directory enquiry service providers to help people to get in touch with their customers without violating anyone's privacy (because the customer data are not made public).

Amendment 73
Bill Newton Dunn

Proposal for a directive – amending act

Article 2 - point 4 e (new)

Directive 2002/58/EC

Article 12 - paragraph 2

Text proposed by the Commission

Amendment

(4e) In Article 12, paragraph 2 shall be replaced by the following:

2. Member States shall ensure that all end-users of electronic communications networks and services automatically have their information included in directory databases and are expressly asked at the moment of requesting the service, and at regular intervals thereafter, how they wish relevant information to be included in such directory databases. End users shall also be offered the option of having certain information included in the database but not disclosed to users of directory services. Subscribers are given

the opportunity to determine whether their personal data are included in a public directory, and if so, which, to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory, and to verify, correct or withdraw such data. Not being included in a public subscriber directory, verifying, correcting or withdrawing personal data from it shall be free of charge.

Or. en

Justification

The inclusion of information on end-users in directory databases is, in many instances, restricted by the practice of operators of not effectively collecting consents

**Amendment 74
Stavros Lambrinidis**

**Proposal for a directive – amending act
Article 2 - point -5 a (new)
Directive 2002/58/EC
Article 13 - paragraph 1**

Text proposed by the Commission

Amendment

(-5a) Article 13(1) shall be replaced by the following:

1. The use of automated calling and communication systems without human intervention (automatic calling machines), facsimile machines (fax), or electronic mail and cellular telephony services for the purposes of direct marketing may only be allowed in respect of users who have given their prior consent as defined in Directive 95/46/EC.

Or. en

Justification

In order to cover the constant development and changes of technologies we refer to

"automated calling and communication systems" in order to maintain a technology neutral approach whilst taking into account ongoing technological changes.

Amendment 75
Alexander Alvaro

Proposal for a directive – amending act
Article 2 - point -5 b (new)
Directive 2002/58/EC
Article 13 - paragraph 1

Text proposed by the Commission

Amendment

(-5b) Article 13(1) shall be replaced by the following:

1. The use of automated calling *and communication* systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail (*including short message services (SMS) and multi media services (MMS)*) for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.

Or. en

Amendment 76
Syed Kamall

Proposal for a directive – amending act
Article 2 - point 5 a (new)
Directive 2002/58/EC
Article 14 - paragraph 1

Text proposed by the Commission

Amendment

(5a) In Article 14, paragraph 1 shall be replaced by the following:

1. In implementing the provisions of this Directive, Member States shall ensure, subject to paragraphs 2 and 3, that no

mandatory requirements for specific technical features, *including, without limitation, for the purpose of detecting, intercepting or preventing infringement of intellectual property rights by users*, are imposed on terminal or other electronic communication equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

Or. en

Amendment 77
Syed Kamall

Proposal for a directive – amending act
Article 2 - point 5 b (new)
Directive 2002/58/EC
Article 14 - paragraph 3

Text proposed by the Commission

Amendment

(5a) In Article 14, paragraph 3 shall be replaced by the following:

3. Where required, measures may be adopted to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and communications. *Such measures shall respect the principle of technology neutrality*

Or. en

Amendment 78
Michael Cashman

Proposal for a directive – amending act

Article 2 - point -7 a (new)

Directive 2002/58/EC

Article 15 - paragraph 1

Text proposed by the Commission

Amendment

(-7a) In Article 15, paragraph 1 shall be replaced by the following:

1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1), (2), (3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, the prevention, investigation, detection and prosecution of criminal offences, of unauthorised use of the electronic communication system, *or the protection of rights and freedom of others*, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, *inter alia*, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph. All the measures referred to in this paragraph shall be in accordance with the general principles of Community law, including those referred to in Article 6(1) and (2) of the Treaty on European Union.

Or. en

Justification

This amendment reiterates that the e-privacy Directive completes the 1995 Framework privacy Directive and that Article 15 should also be read in light of Article 13 of the Framework Privacy Directive. The purpose of this amendment is to increase legal certainty as confirmed by the recent ECJ case law (C-275/06).

Amendment 79
Alexander Alvaro

Proposal for a directive – amending act
Article 2 - point -7 b (new)
Directive 2002/58/EC
Article 15 - paragraph 1

Text proposed by the Commission

Amendment

(-7b) In Article 15, paragraph 1 shall be replaced by the following:

1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5 (1) and (2), Article 6, Article 8(1), (2), (3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorized use of the electronic communication system *including the right to property*, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph. All the measures referred to in this paragraph shall be in accordance with the general principles of Community law, including those referred to in Article 6(1) and (2) of the Treaty on European Union.

Or. en

Amendment 80
Jean-Marie Cavada

Proposal for a directive – amending act

Article 2 - point -7 c (new)

Directive 2002/58/EC

Article 15 - paragraph 1

Text proposed by the Commission

Amendment

(-7c) In Article 15, paragraph 1 is replaced by the following:

1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1), (2), (3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as well as the protection of the rights and freedoms of others, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph. All the measures referred to in this paragraph shall be in accordance with the general principles of Community law, including those referred to in Article 6(1) and (2) of the Treaty on European Union.

Or. fr

Justification

This amendment clarifies the fact that the list of exceptions in Article 15(1) is not exhaustive and should include the exceptions set out in Article 13(1) of Directive 95/46/EC, to which Article 15(1) refers. This was recently confirmed by the Court of Justice in respect of the exception concerning the protection of the 'rights and freedoms of others' referred to in Article 13(1)(g) of Directive 95/46/EC (see the Court of Justice's judgment of 29 January

2008 in Case C-275/06, *Promusicae v Telefónica*). The amendment seeks to enhance legal certainty by incorporating the court's findings into Article 15(1).

Amendment 81
Patrick Gaubert

Proposal for a directive – amending act
Article 2 - point -7 d (new)
Directive 2002/58/EC
Article 15 - paragraph 1

Text proposed by the Commission

Amendment

(-7d) In Article 15, paragraph 1 is replaced by the following:

1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1), (2), (3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as well as the protection of the rights and freedoms of others, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph. All the measures referred to in this paragraph shall be in accordance with the general principles of Community law, including those referred to in Article 6(1) and (2) of the Treaty on European Union.

Or. fr

Justification

This minor adjustment brings the text into line with the 1995 'privacy' directive, with a view to safeguarding the rights and freedoms of others and thus ensuring enhanced protection for intellectual property rights in connection with electronic communication networks and services. At the same time, it takes account of the latest developments in Court of Justice case law.

Amendment 82 **Stavros Lambrinidis**

Proposal for a directive – amending act

Article 2 - point -7 e (new)

Directive 2002/58/EC

Article 15 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

(-7e) In Article 15, the following paragraph 1a shall be added:

1a. Providers of publicly available communications services and providers of Information society services must notify the Independent Data Protection Authorities, without undue delay, on all requests for access to users' personal data received pursuant to art. 15 par. 1, including the legal justification given and the legal procedure followed for each request; the Independent Data Protection Authority shall notify the appropriate judicial authorities in cases in which it deems that the established provisions, under national law, have not been followed.

Or. en

Amendment 83 **Stavros Lambrinidis**

Proposal for a directive – amending act

Article 2 - point 7

Directive 2002/58/EC

Article 15 a- paragraph 1

Text proposed by the Commission

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Amendment

1. Member States shall lay down the rules on penalties - ***including penal sanctions, where appropriate*** - applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Or. en

Amendment 84
Stavros Lambrinidis

Proposal for a directive – amending act
Article 2 - point 7
Directive 2002/58/EC
Article 15a - paragraph 4 – subparagraph 1

Text proposed by the Commission

4. In order to ensure effective cross-border co-operation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with ***the Authority*** and the relevant regulatory authorities.

Amendment

4. In order to ensure effective cross-border co-operation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with ***ENISA, the Article 29 Working Party*** and the relevant regulatory authorities.

Or. en

Amendment 85

Syed Kamall

Proposal for a directive – amending act

Article 2 - point 7 a (new)

Directive 2002/58/EC

Article 18

Text proposed by the Commission

Amendment

(7a) Article 18 shall be replaced by the following:

18. The Commission shall submit to the European Parliament and the Council, not later than *two* years after the date *set out in [transposition date]* referred to in Article 17(1), a report on the application of this Directive and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, *breach notifications, and the use of personal data by third parties - public or private - for purposes not covered by this Directive*, taking into account the international environment. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay. Where appropriate, the Commission shall submit proposals to amend this Directive, taking account of the results of that report, any changes in the sector *and the Treaty of Lisbon, in particular the new competences in matters of data protection as laid down in Article 16*, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.

Or. en

Amendment 86
Stavros Lambrinidis

Proposal for a directive – amending act
Article 2 - point 7 b (new)
Directive 2002/58/EC
Article 18 a (new)

Text proposed by the Commission

Amendment

(7b) The following Article 18a is inserted:

Article 18a

No later than 2011, the Commission shall submit to the EP, the Council and the EESC a study on the development of hybrid public/private networks and their inclusion within scope of application of this directive, following the consultation of the Article 29 working Party and the EDPS.

Or. en

Amendment 87
Alexander Alvaro

Proposal for a directive – amending act
Article 2 - point 7 c (new)
Directive 2002/58/EC
Article 18 a (new)

Text proposed by the Commission

Amendment

(7c) The following Article 18a is inserted:

Article 18a

The Commission shall submit to the European Parliament and the Council, not later than two years after the entry into force of this Directive, a report on the application of this Directive and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, breach notifications, and the use of personal data by third parties - public or private - for purposes not covered by this Directive,

taking into account the international environment. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay. Where appropriate, the Commission shall submit proposals to amend this Directive, taking account of that report, any changes in the sector, and the Treaty of Lisbon, in particular the new competences in matters of data protection as laid down in Article 16, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.

Or. en

Amendment 88
Syed Kamall

Proposal for a directive – amending act
Article 1 - point 12
Directive 2002/22/EC
Article 20 – paragraph 2 – point h

Text proposed by the Commission

(h) the action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities.

Amendment

(h) the action that might be taken by the undertaking providing connection and/or services in reaction to **significant breaches of** security or integrity incidents or threats and vulnerabilities.

Or. en

Amendment 89
Silvia-Adriana Țicău

Proposal for a directive – amending act
Article 1 - point 12
Directive 2002/22/EC
Article 20 - paragraph 7a (new)

(7a) With a view to protecting consumers' interests, the national regulatory authorities for electronic communications shall, each year, supply standard contracts to the electronic communications service providers within the territory of the Member State concerned. These standard contracts must offer subscribers sufficient freedom of choice as regards the applicable options (minimum period, type of subscription, etc). Electronic communications service providers may not include, in the form of any document annexed to the contract for electronic communications service provision, any clause additional to those of the standard contract setting conditions relating to the provision of electronic communications services under the contract. Any requests by subscribers concerning possible improvement of the standard contract shall be transmitted by them to the national regulatory authorities in order to be included in the annual information on standard contracts given to electronic communications service providers.

Or. ro

Justification

The subscriber needs to have more negotiating clout when dealing with electronic communications service providers. Comments of interest to users which could lead to improvements in the standard contract should be transmitted to the national regulatory authorities in order to be included in the annual information on standard contracts given to electronic communications service providers.

Amendment 90
Nicolae Vlad Popa

Proposal for a directive – amending act
Article 1 - point 13 – point a a (new)
Directive 2002/22/EC
Article 22 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

(aa) The following paragraph 1a is added:

‘1a. In order to safeguard consumer rights and ensure that a minimal open Internet layer is maintained, an ex ante requirement of reporting service metrics to demonstrate internal network quality [ma refer la “quality of service”] to regulators, content providers, and consumers will be imposed. Any representation as to the speed or “bandwidth” of the Internet access shall be limited to the speed or bandwidth allocated to Internet access service only, not taking into account special services and features based on analyzing and identifying particular applications being conveyed by packet transmissions.’

Or. en

Amendment 91
Nicolae Vlad Popa

Proposal for a directive – amending act
Article 1 - point 13 – point a b (new)
Directive 2002/58/EC
Article 22 - paragraph 1 b

Text proposed by the Commission

Amendment

(ab) The following paragraph 1b is added:

‘1b. The term “Internet access” represents a service that enables users to transmit and receive transmissions of data - including sounds, images, text,

information, and other content - using the Internet protocol indifferent to the nature, source or destination of the transmission of any packet.'

Or. en

Amendment 92
Silvia-Adriana Țicău

Proposal for a directive – amending act

Article 1 - point 18

Directive 2002/22/EC

Article 30 - paragraph 6

Text proposed by the Commission

6. Without prejudice to any minimum contractual period, national regulatory authorities shall ensure that conditions and procedures for termination of contract do not act as a disincentive for changing suppliers of services.

Amendment

(6) Without prejudice to any minimum contractual period, national regulatory authorities shall ensure that conditions and procedures for termination of contract do not act as a disincentive for changing suppliers of services. ***Providers of electronic communications services shall clearly distinguish the conditions of termination applicable to the initial contractual period from those applicable to the subsequent contractual periods following renewal of the contract.***

Or. ro

Justification

Subscribers should not, after a minimum initial contractual period, be asked to pay a termination fee should they no longer require the electronic communications services concerned by the contract.

Proposal for a directive – amending act
Annex I - part A - point e

Text proposed by the Commission

(e) Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. Any service interruption shall normally be confined to the service concerned. ***Exceptionally, in cases of fraud, persistent late payment or non-payment, Member States shall ensure that national regulatory authorities are able to authorise disconnection from the network as a result of non-payment of bills for services provided over the network.*** Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only services that do not incur a charge to the subscriber (e.g. “112” calls) are permitted.

Amendment

(e) Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. ***The transmission of this warning may be made by one of several means of communication (e.g. the post, email, telephone, fax, SMS, etc).*** Any service interruption shall normally be confined to the service concerned. ***The national regulatory authorities shall establish common rules for disconnecting subscribers in case of fraud, late payment or repeated non-payment, to be applicable to all providers of electronic communications services. Information concerning non-payment of electronic communications services or disconnection for that reason shall be considered to be personal data and shall not be communicated to third parties (natural or legal persons), other than with the subscriber's written agreement.*** Disconnection for non-payment of bills should take place only after due warning is given to the subscriber ***and a reasonable period has elapsed to allow for regularisation of the situation and payment of the bills.*** Member States may allow a period of limited service prior to complete disconnection, during which only services that do not incur a charge to the subscriber (e.g. “112” calls) are permitted

Or. ro

Justification

These provisions are necessary for consumer protection.